

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL NO. G-03-08
	§	CIVIL ACTION NO. G-05-149
LAWRENCE CHRISTOPHER MORENO	§	

OPINION AND ORDER

Before the Court is the "United States' Motion for Summary Judgment" filed in response to the "Motion to Vacate, Set Aside or Correct Sentence" of Lawrence Christopher Moreno. Having considered the motion and Moreno's responsive submissions, the Court issues this Opinion and Order.

In its motion the Government seeks the dismissal of Moreno's § 2255 Motion on the basis of the Plea Bargain Agreement which waived Moreno's right to seek collateral relief from his sentence. The Government argues that Moreno voluntarily agreed to the waiver. However, Moreno is claiming that his guilty plea, itself, was involuntary because of his lawyer's erroneous advise that his sentence would not exceed five years. At this stage of the proceedings, the Court must accept Moreno's extra-judicial allegations as true, and those allegations, if proven, could entitle Moreno to relief. Cf. Beckham v. Wainwright, 639 F.2d 262, 267 (5th Cir. 1981) Consequently, in the opinion of this Court, Moreno should be afforded an Evidentiary Hearing.

Pursuant to Rule 8(c) of the "Rules Governing Section 2255 Proceedings" this Court **WILL** appoint counsel to represent Moreno and schedule an Evidentiary Hearing after giving the Parties adequate time to investigate and prepare.

DONE at Galveston, Texas, this 9th day of November, 2005.



John R. Froeschner
United States Magistrate Judge